IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 24TH DAY OF JANUARY 2024 / 4TH MAGHA, 1945

CRL.MC NO. 27 OF 2024

CRIME NO.80/2001 OF Venjaramoodu Police Station, Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT CC 5002/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,ATTINGAL

PETITIONER/S:

DILEEP KUMAR
AGED 50 YEARS
S/O SOMAN, RESIDING AT M.S.N. HOUSE, PULIMATH VILLAGE, CHIRAYINKEEZHU TALUK, THIRUVANANTHAPURAM DISTRICT, PIN - 695612

BY ADVS.
J.R.PREM NAVAZ
SUMEEN S.
MUHAMMED SWADIQ
O.MOHAMED BASIL KOYA THANGAL

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.01.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

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Crl.M.C.No.27 of 2024

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Dated this the 24th day of January, 2024

ORDER

Petitioner was the 1st accused in C.C.No.404/2001 on the files of the Judicial First Class Magistrate Court-I, Attingal. Since he had absconded, the case against him was split up and is now renumbered as C.C.No.5002/2021 on the files of the Judicial First Class Magistrate Court-II, Attingal. Petitioner seeks the benefit of acquittal of co-accused.

2. Since the case against the petitioner was split up, the remaining accused, other than respondents 2 and 3 were tried and they were acquitted by judgment dated 30.04.2004. As far as the original accused 2 and 3 were concerned, they were tried in C.C.No.264/2004 and by judgment dated 30.01.2010, those two accused were also acquitted. Learned Counsel for the petitioner contended that benefit of acquittal of the remaining accused ought be extended to the petitioner. In support of his contentions he relied upon the observations made in two judgments acquitting accused Nos.2 to 7 in the original case.

3. Sri.K.A.Noushad, learned Public Prosecutor, on the other hand contended that the acquittal of accused 2 to 7 was on the basis of the nature of evidence adduced therein and the said benefit cannot be extended to the petitioner, who was the 1st accused. Specific observations

made in Judgment in C.C.No.404/2001, was also pointed out, indicating that the main offence is alleged against the petitioner and therefore, the acquittal of the remaining accused has no bearing, in the circumstances of the case.

4. On a perusal of the judgment in C.C.No.404/2001, it is noticed that the said accused therein were acquitted on the basis of the observation that MO1 sword was used by the 1st accused Dileep, who is the petitioner herein and that there are inconsistencies between the versions of some of the accused. Similarly in the subsequent prosecution of original accused Nos.2 and 3, in C.C.No.264/2004 it is seen observed by the learned Magistrate that CW 1 and 2 are not examined as they could not be procured, as they were abroad. CW3, CW5 and CW6 were declared hostile. It is also seen that the persons who registered the FIR as well as the Investigating Officer were not examined.

5. In this context it is necessary to refer to the observations of the learned Magistrate that even if the remaining witnesses are examined, that will not improve the prosecution case, as the independent witnesses had turned hostile.

6. On an appreciation of the above factual situation as well as the circumstances and the evidence adduced in the two criminal cases relating to original accused 2 to 7, it is noticed that the crime is of the year 2001 and the prosecution had not been able to prove the guilt of the accused beyond reasonable doubt. Even the Investigating Officer and the person who recorded the FIR could not be produced for examination in the

second case. Most of the other witnesses are turned hostile.

7. Taking note of the above circumstances, it is evident that the very substratum of the prosecution case has eroded and no purpose would be achieved by continuing the proceedings.

8. Accordingly, I quash all proceedings in C.C.No.5022/2021 on the files of the Judicial First Class Magistrate Court, Attingal.

The Crl.M.C. is allowed as above.

sd/

BECHU KURIAN THOMAS
JUDGE

jm/

APPENDIX OF CRL.MC 27/2024

PETITIONER ANNEXURES

Annexure A1	THE CERTIFIED COPY OF THE FINAL REPORT/ CHARGE SHEET IN CRIME NO: 80 OF 2001 OF VENJARAMOODU POLICE STATION, THIRUVANANTHAPURAM DISTRICT
Annexure A2	THE CERTIFIED COPY OF THE JUDGMENT DATED 30.01.2010 IN C.C. NO: 264 OF 2004 PASSED BY THE COURT OF JFCMC-II ATTINGAL
Annexure A3	THE CERTIFIED COPY OF THE JUDGMENT DATED 30.04.2004 IN JUDICIAL MAGISTRATE OF FIRST CLASS-II, ATTINGAL IN CC 404/2001